presence of an express intention to damage some person, as to make it necessary for a defendant to show a good motive by way of justification. It can hardly be doubted that Lord Herschell took some such view. See 11 HARVARD LAW REVIEW, 405. The result of the case, however, may be reached under the contrary theory of the law of torts, that every intentional infliction is actionable unless shown to be done with motives, or under particular circumstances, which the law treats as a justification. The aim of the defendant to strengthen his trades union may then be treated as a justification of his acts. It is presumably on this ground that Mr. Chief Justice Holmes, who has ably set forth the latter theory of torts in 8 HARVARD LAW REVIEW, 1, approved the decision of *Allen* v. *Flood* in his dissenting opinion in *Plant* v. *Woods*, 176 Mass. 492, 504.

The case of *Quinn* v. *Leathem* has a double effect. It effectually discredits the conservative view of the law of torts advocated by Lord Herschell. At the same time, it furnishes a weighty authority against the legality of the form of action by labor organizations commonly called a "boycott." It is to be regretted, however, that the opinions of the lords do not go farther towards giving some satisfactory criteria for the guidance of the courts, and of the public, in dealing with matters of such serious importance. R. G.

INTERSTATE COMMERCE AND THE COMMON LAW. — The question whether, in the absence of congressional legislation, a court has jurisdiction over interstate commerce has aroused much discussion. Some courts have held that there are no laws, except congressional enactments, which can affect such matters, and so long as Congress fails to act, interstate carriers are free to carry on their business as they please. *Swift* v. *Phila. & Reading R. R.*, 64 Fed. Rep. 59; 9 HARVARD LAW REVIEW, 217. On the other hand, it is said that there is in force throughout the country a national common law, which regulates the matter. *Murray* v. *C. & N. W. R. R.*, 62 Fed. Rep. 24; 8 HARVARD LAW REVIEW, 168. As it has been thought necessary to go to either one of these extremes, it will doubtless be generally assumed that a recent decision of the United States Supreme Court has settled the controversy in favor of a national common law. Although there is no congressional statute which applies, the plaintiff, in the case in point, obtained a judgment in a state court for unreasonable discrimination in rates for interstate business. This judgment was affirmed in the Federal Supreme Court, which held that the state court had sufficient jurisdiction and authority. *Western Union Teleg. Co.* v. *Call Publishing Co.*, 21 Sup. Ct. Rep. 561. A careful analysis of the opinion, however, shows that the decision is limited to the question of the liability of interstate merchants, and although the language of the court is very broad and general, it does not commit itself definitely concerning the existence of a general common law.

It is well that the question has been left open for further discussion, as neither of the prevailing theories seems satisfactory. It would be an unfortunate result to hold that interstate carriers have the commerce of the country at their mercy, and that these carriers may refuse to serve when they wish and may charge whatever they see fit. 7 HARVARD LAW REVIEW, 488. On the other hand, the objection may be raised that the common law in force in each state is adopted by the state itself. If there is a general common law, it must issue from some sovereign power,

which, in this case, can only be the Constitution. As the existence of two systems of law, operating upon the same subject-matter within one state, seems fundamentally impossible, the logical result is that the Constitution has forced a system of common law upon all the states; a doctrine which receives but little support from that instrument. *Forepaugh* v. *Del., Lack. & West. R. R.*, 128 Pa. St. 217. It does not seem necessary to go to either of these limits to support the principal case. The common law of the states, generally very similar, is sufficient to control interstate carriers. It is no more impossible for a state to forbid discrimination within its limits, although the contract contemplates an interstate carriage, than it is to control a contract made within its jurisdiction concerning the sale of land in other states. In the light of these facts, failure by Congress to legislate can only be construed as an intention to adopt existing conditions, and hence to leave interstate commerce to the care of state law. *Smith* v. *Alabama*, 124 U. S. 465. This view is possible under this last decision, and seems to avoid the dilemma which is supposed to have confronted the court.

LIABILITY FOR DAMAGES CAUSED BY UNLAWFUL ACTS. — The principle on which liability is imposed for damages resulting, as the unforeseen consequences of unlawful acts, has never been exactly defined. A recent decision suggests an important distinction between those cases where the unlawful act is morally wrong and those where it is merely in the nature of a public tort. *Osborne* v. *Van Dyke*, 85 N. W. Rep. 784 (Ia.). The defendant, while beating his horse with a pointed stick, slipped, and thereby accidentally struck the plaintiff. The court held that if the defendant was breaking a statute forbidding cruelty to animals, and the plaintiff's damage was a direct consequence of his act, he was liable even though the damage could not reasonably have been foreseen.

It is commonly admitted at the present day that the general ground for liability in tort is damage directly caused to person or property by blameworthy conduct on the part of another as regards that person or property. This principle seems to have been reached, both consciously and unconsciously, on the theory that human activity is to be encouraged, and, consequently, that loss should be allowed to rest where it falls, if the party causing it has been blameworthy towards the party damaged, only in having been active. Two exceptions to this rule, in cases of unlawful acts, apparently exist. In the first place, where a defendant is engaged in some act unlawful because of its morally wrong nature, he is made liable for any damage directly resulting from the act. Although considerable doubt has been thrown on this proposition, Terry's Leading Principles of Law, 555, yet it appears to have been followed by the few decisions in point, and to have a rational foundation. *James* v. *Campbell*, 5 C. & P. 372. The reason for not holding liable a defendant who has merely been active in causing damage, namely, that human activity is to be encouraged, entirely fails where we find that the activity was of a criminal nature. In the second place, where there is a breach of a statute forbidding or ordering an act which is not immoral, but which constitutes merely a public tort, there is liability for damages resulting, provided the injured party is of that class which the statute was designed to protect. *Gorris* v. *Scott*, L. R. 9 Ex. Div. 125; *Atkinson* v. *Newcastle Waterworks*